

**IN THE COURT OF APPEAL OF MANITOBA**

*Coram:* Mr. Justice Michel A. Monnin  
Madam Justice Jennifer A. Pfuetzner  
Madam Justice Janice L. leMaistre

***BETWEEN:***

<b><i>JIM BELL</i></b>	) <b><i>G. A. McKinnon and</i></b>
	) <b><i>S. S. R. Thomson</i></b>
	) <b><i>for the Appellants</i></b>
(Applicant) Respondent	)
- and -	) <b><i>K. A. McCandless and</i></b>
	) <b><i>E. N. Blouw</i></b>
	) <b><i>for the Respondent</i></b>
<b><i>CIVIL AIR SEARCH AND RESCUE</i></b>	)
<b><i>ASSOCIATION and CIVIL AIR SEARCH</i></b>	) <b><i>Appeal heard and</i></b>
<b><i>AND RESCUE ASSOCIATION OF</i></b>	) <b><i>Decision pronounced:</i></b>
<b><i>MANITOBA INC.</i></b>	) <b><i>September 18, 2018</i></b>
	)
(Respondents) Appellants	) <b><i>Written reasons:</i></b>
	) <b><i>October 1, 2018</i></b>

On appeal from 2017 MBQB 123

**PFUETZNER JA** (for the Court):

[1] The applicant, Bell, was successful in his application for judicial review of the decisions of the respondents to permanently suspend his membership in the respondent, Civil Air Search and Rescue Association of Manitoba Inc. (CASARA Manitoba).

[2] The primary issue on this appeal is whether, in light of the recent decision of the Supreme Court of Canada in *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall*, 2018 SCC 26, the

application judge erred in finding that the Courts have jurisdiction to judicially review a membership dispute involving a private organisation. At the conclusion of the oral hearing of the appeal, we allowed the appeal without costs to any party, with reasons to follow. These are those reasons.

[3] CASARA Manitoba is a voluntary association incorporated as a non-share capital corporation under *The Corporations Act*, CCSM c C225. It provides volunteers for search and rescue operations and it promotes aviation safety. All members are volunteers who are not paid but who can receive reimbursement of expenses. CASARA Manitoba, together with similar organisations in the other provinces and territories, is a member organisation of the respondent, Civil Air Search and Rescue Association. The respondents receive most of their funding from the Department of National Defence.

[4] The application judge found that judicial review was available and that the respondents' decisions had been made in breach of the duty of procedural fairness owed to Bell. He ordered that Bell's membership be restored, as well as ordering other relief. The respondents appealed and argued, relying on *Wall*, that the application judge erred in granting judicial review.

[5] The application judge did not have the benefit of the reasons in *Wall* which were released nearly one year after the application judge released his decision. Prior to *Wall*, there was inconsistency in the jurisprudence on the question of whether or when the Courts have jurisdiction to review the decisions of voluntary associations when there are concerns about procedural fairness.

[6] *Wall* has provided needed clarity on this issue. *Wall* stands for the

following principles relevant to the main issue on this appeal:

- The purpose of judicial review is to “ensure the legality of state decision making” and to “engage in surveillance of lower tribunals”. As a result, “[p]rivate parties cannot seek judicial review to solve disputes that may arise between them; rather, their claims must be founded on a valid cause of action, for example, contract, tort or restitution” (at para 13).
- “Judicial review is only available where there is an exercise of state authority and where that exercise is of a sufficiently public character” (at para 14).
- The actions of private bodies, such as churches and other voluntary associations, are not susceptible to judicial review even if such actions have a broad public impact. A distinction must be made “between ‘public’ in a generic sense and ‘public’ in a public law sense”, the latter of which “involves questions about the rule of law and the limits of an administrative decision maker’s exercise of power” (at para 20).

[7] Simply put, in analysing whether the Court has jurisdiction to entertain an application for judicial review, “[t]he relevant inquiry is whether the legality of state decision making is at issue” (at para 21).

[8] There is no question that the respondents do not exercise state decision making. Their receipt of government funding and the benefit to the public of their activities is not relevant to the analysis. Bell rightly conceded this at the hearing of the appeal.

[9] As a result, the application judge erred in taking jurisdiction to judicially review the membership dispute between Bell and the respondents.

[10] While this conclusion is sufficient to dispose of the appeal, we will briefly address a further issue raised by Bell.

[11] In addition to confirming that judicial review is not available in respect of voluntary associations, *Wall* also provides direction on the ability of the Courts to review decisions of voluntary associations for procedural fairness outside of the forum of judicial review. The Courts will not intervene in disputes over membership in a voluntary association where no civil or property right is granted by that membership, even if there is an alleged breach of natural justice (at para 24).

[12] Bell argues that, pursuant to the terms of the bylaws of CASARA Manitoba, a binding contract was created between Bell and CASARA Manitoba when he paid his membership fees. Bell submits that the respondents breached that contract when they suspended his membership without honouring the terms of the bylaw and their own membership dispute resolution policy. He maintains that, on this basis, we can uphold the result reached by the application judge.

[13] We do not accept Bell's argument. He did not bring an action seeking to enforce a legal right that arose from his membership in CASARA Manitoba. He sought only judicial review of the decisions to suspend his membership. However, even if he had brought an action by way of a statement of claim, in our view, there is nothing in the record that indicates that Bell has a civil or property right that turns on his membership (see *Lakeside Colony of Hutterian Brethren v Hofer*, [1992] 3 SCR 165 at 173-74;

and *Wall* at para 24).

[14] Since the issue of the availability of judicial review in the circumstances was uncertain, both at the hearing of the application and at the time the appeal was set down for hearing, the parties should bear their own costs.

[15] In the result, the appeal was allowed, without costs to any party in this Court or in the Court below, and the application judge's judgment was vacated.

Pfuetzner JA

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Monnin JA

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leMaistre JA

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